

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

AMRISH RAJAGOPALAN, et al.,

Plaintiffs,

v.

FIDELITY AND DEPOSIT COMPANY  
OF MARYLAND,

Defendant.

CASE NO. C16-5739BHS

ORDER REQUESTING  
ADDITIONAL BRIEFING AND  
RENOTING DEFENDANT'S  
MOTION

This matter comes before the Court on Defendant Fidelity and Deposit Company of Maryland's ("Fidelity") motion to dismiss class action complaint (Dkt. 8). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby rules as follows:

**I. PROCEDURAL HISTORY**

On July 18, 2016, Plaintiffs Amrish Rajagopalan, Marie Johnson-Peredo, Robert Hewson, Donte Cheeks, Deborah Horton, Richard Pierce, Erma Sue Clyatt, Robert Joyce, Amy Joyce, Arthur Fuller, Dawn Meade, Wahab Ekunsum, Karen Hea, and Alex Casiano ("Plaintiffs") filed a class action complaint against Fidelity in Pierce County Superior

1 Court for the State of Washington. Dkt. 1, Exh. A (“Comp”). Plaintiffs allege violations  
2 of Washington’s Insurance Fair Conduct Act (“IFCA”), bad faith, violation of  
3 Washington’s Consumer Protection Act (“CPA”), and negligence. *Id.*

4 On August 24, 2016, Fidelity removed the matter to this Court. Dkt. 1.

5 On August 31, 2016, Fidelity filed a motion to dismiss. Dkt. 8. On October 21,  
6 2016, Plaintiffs responded. Dkt. 12. On November 4, 2016, Fidelity replied. Dkt. 17.

## 7 **II. FACTUAL BACKGROUND**

8 Meracord, LLC (“Meracord”) was a payment processing company that provided  
9 money transmission services nationwide. Comp., ¶ 1. Fidelity issued bonds in 19 states  
10 backing Meracord’s money transmitter licenses (“the Bonds”). *Id.*, ¶ 3. In 2011,  
11 Meracord faced a series of class action lawsuits brought by consumers alleging that  
12 Meracord had violated various state and federal laws in connection with its processing of  
13 payments for the debt relief services industry. *Id.*, ¶ 4. In October 2013, the Consumer  
14 Financial Protection Bureau announced an enforcement action that effectively shut down  
15 Meracord, imposing a \$1.3 million penalty and barring Meracord and its owner, Linda  
16 Remsberg, from the debt settlement industry. *Id.*, ¶ 6.

17 Plaintiffs allege that a proposed settlement of their class action against Mericord  
18 was reached that involved many moving parts. Relevant to the instant motion, the  
19 settlement required Fidelity to contribute by partial tender of some of the Bonds. *Id.*, ¶  
20 8–9. Fidelity refused to tender and the settlement fell through. *Id.*, ¶ 10. Meracord  
21 defaulted and suffered a \$1.45 billion judgment against it. *Id.* Plaintiffs executed on the  
22 final judgment, and on April 13, 2016, they acquired all claims that Meracord had against

1 the sureties. *Id.*, ¶ 16. Plaintiffs bring this action as the lawful owner of Meracord's  
 2 claims against Fidelity. *Id.*

### 3 **III. DISCUSSION**

4 As a threshold matter, the parties advance plausible, competing arguments for the  
 5 extension of existing law in Washington. In other words, the parties have presented  
 6 issues of first impression. Based on the parties' briefs and independent research, the  
 7 Court is hesitant to issue an order resolving the questions under existing law. Thus, the  
 8 Court requests additional briefing regarding whether all four questions should be certified  
 9 to the Washington Supreme Court. Regarding the tort of bad faith, the Washington  
 10 Supreme Court has addressed the tort in the context of a duty the surety owes to the  
 11 obligee, but not the bond principal. *Colorado Structures, Inc. v. Ins. Co. of the W.*, 161  
 12 Wn.2d 577, 597–607 (2007). Regarding the statutory causes of action, Washington  
 13 courts have not addressed the issue of whether a bond principal meets the definition of a  
 14 first party claimant under RCW 48.30.015(4). Regarding the negligence claim, Plaintiffs  
 15 rely on violations of Washington statutes to support the claim, which raises issues of first  
 16 impression. Therefore, the Court finds that these questions should most likely be  
 17 certified to the Washington Supreme Court. The Court requests the parties' positions on  
 18 whether the questions should be certified and, if so, draft language of the particular  
 19 questions.

### 20 **IV. ORDER**

21 Therefore, it is hereby **ORDERED** that the parties may submit simultaneous  
 22 response briefs no later than January 27, 2017, and simultaneous reply briefs no later than

1 February 3, 2017. The Clerk shall renote Fidelity's motion for consideration on the  
2 Court's February 3, 2017 calendar.

3 Dated this 17th day of January, 2017.

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6 BENJAMIN H. SETTLE  
7 United States District Judge  
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